

Realising the Right to Education for Environmental and Social Sustainability in Kenya

By Kariuki Muigua*

*Ph. D in Law (Nrb), FCIArb, LL.B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); MKIM; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; Advocate of the High Court of Kenya; Lecturer at the Centre for Advanced Studies in Environmental Law & Policy (CASELAP), University of Nairobi, and the Chairperson CIArb (Kenya Branch).

The Author wishes to acknowledge Ngararu Maina, LL.B (Hons) Moi, for research assistance extended in preparation of this paper. [October, 2014].

Abstract

This paper proposes that education can effectively be used as a tool for promoting and achieving environmental and social sustainability in Kenya. The author advances the view that due to the major interaction of people and their environment, the human activities directly affect the quality and health of the physical environment. With the ever growing global calls to States' action for sustainability, the writer suggests that for any fruitful effort to succeed, focus should be on all the aspects thereof including economic, social and environmental sustainability. There is need to effectively address environmental justice and the constitutionally guaranteed human right to live in a clean, safe, and healthy environment. It is noteworthy that most of the world's poor people and more so in Kenya often live in a degraded environment and have no actual control over environmental resources. In the context of environmental justice, it is important that these people be included or allowed to participate meaningfully in the global efforts to achieve environmental and social sustainability through empowering them to take part in decision making processes. This can effectively be achieved through realising the human right to education for all in Kenya, and particularly environmental education which would help communities appreciate the sustainable development discourse more and consequently participate voluntarily and more actively.

1. Introduction

This paper discusses how environmental sustainability and social sustainability can be achieved through realising the right to education in Kenya for all people. It explores the subjects and contents of environmental sustainability and social sustainability with a view to establishing the nexus between these and the right to education. It briefly examines the efficacy of the legal and institutional framework on the right to education at the international, regional and national levels. The author argues that environmental sustainability and social sustainability are so interconnected to the right to education that it is not possible to realise the former without first guaranteeing access to the latter since this offers communities a voice and ability to participate in decision making processes and enhances environmental awareness. The argument herein is that if the general public is to be actively involved in environmental governance¹ for purposes of achieving sustainable development as contemplated in the current Constitution of Kenya 2010², then people should ideally be empowered through education to help them fully participate in environmental governance.

2. Environmental Sustainability

'Sustainability' is used to refer to: the need for reconciliation between economic development and environmental conservation; the need to place any understanding of environmental concerns within a socio economic and political context; and the need to combine environment and development concerns.³ Environmental sustainability can be defined as a condition of balance, resilience, and interconnectedness that allows human society to satisfy its needs while neither exceeding the capacity of its supporting ecosystems to continue to regenerate the services necessary to meet those needs nor by their actions diminishing biological diversity.⁴ Further, it has been posited that if it can be agreed that a sustainable environment is a necessary prerequisite to a sustainable socio-economic system, then it also should make sense that the

¹ Environmental governance includes the structures, organisational forms, processes, actors and rules that determine how environmental resources are governed.

²Article 10, Constitution of Kenya, 2010 (Government Printer, Nairobi).

³ World Conservation Strategy (IUCN/UNEP/WWF, 1980); the Brundtland Report (World Commission on Environment and Development, 1987)

⁴Morelli, John (2011) "Environmental Sustainability: A Definition for Environmental Professionals," *Journal of Environmental Sustainability*: Vol. 1: Iss. 1, Article 2, pp. 1-9 at p. 5. Available at <http://scholarworks.rit.edu/cgi/viewcontent.cgi?article=1007&context=jes> [Accessed on 22/09/2014].

actions taken to remove threats to and foster environmental sustainability should contribute to such a system.⁵

There are three essential aspects of sustainable development: Economic: An economically sustainable system must be able to produce goods and services on a continuing basis, to maintain manageable levels of government and external debt, and to avoid extreme sectoral imbalances which damage agricultural or industrial production; Environmental: An environmentally sustainable system must maintain a stable resource base, avoiding over-exploitation of renewable resource systems or environmental sink functions, and depleting non-renewable resources only to the extent that investment is made in adequate substitutes. This includes maintenance of biodiversity, atmospheric stability, and other ecosystem functions not ordinarily classed as economic resources; and social: A socially sustainable system must achieve fairness in distribution and opportunity, adequate provision of social services including health and education, gender equity, and political accountability and participation.⁶ Out of the three aspects, this discussion is more concerned with environmental sustainability than the other two components of sustainable development. It is noteworthy that environment plays such a major role in the life of human beings and a country in general that the Constitution of Kenya 2010 notes in its preamble that the environment is the heritage of the people of Kenya and whom people are determined to maintain it for the benefit of future generations.⁷ As thus, it is important that all persons, including the young ones, are equipped with the necessary environmental education to enable them realise and promote this constitutional spirit.

One such step is empowering people through education to give them alternative means of making a living for social sustainability as opposed to relying on environment only as well as enabling them make informed decisions that would contribute positively to environmental sustainability. Education is important for promoting sustainable development and improving the

⁵Ibid, p.4.

⁶ Harris, J.m., 'Sustainability and Sustainable Development', *International Society for Ecological Economics Internet Encyclopaedia of Ecological Economics*, February 2003, p. 1. Available at <http://www.isecoeco.org/pdf/susdev.pdf> [Accessed on 20/09/2014].

⁷Preamble, Constitution of Kenya 2010.

capacity of people to address environment and development issues.⁸ However, it has rightly been observed that being informed about the environment and having a positive attitude towards the environment are, although essential, not sufficient in resolving environmental problems. In order for people to be able to act upon their knowledge and awareness they need to become acquainted with a variety of action skills.⁹ Therefore, education or information must be followed by actual participation in activities geared towards environmental sustainability.

3. Social Sustainability and the Environment

Social sustainability has been defined as concerning how individuals, communities and societies live with each other and set out to achieve the objectives of development models which they have chosen for themselves, also taking into account the physical boundaries of their places and planet earth as a whole.¹⁰ Social sustainability combines design of the physical realm with design of the social world– infrastructure to support social and cultural life, social amenities, systems for citizen engagement and space for people and places to evolve.¹¹

Every person has a right to a healthy or clean environment or an environment conducive to well-being and higher standards of living, all of which centre on the quality of life of all throughout the world.¹² Indeed, in the Kenyan case of *Waweru v Republic*¹³, it was held that development that threatens life is not sustainable and ought to be halted and that in environmental law, life must therefore have this expanded meaning as a matter of necessity.

⁸UNESCO, 1992, para. 36.3, p. 2 (as quoted in Tilbury, D., 'Environmental Education for Sustainability: Defining the New focus of Environmental Education in the 1990's', *Environmental Education Research, Vol. 1, No. 2, 1995*, 195-212 at p.198.

⁹Ibid, p.203.

¹⁰Colantonio, A. and Dixon, T. (2009) *Measuring Socially Sustainable Urban Regeneration in Europe*, Oxford Brookes University: Oxford Institute for Sustainable Development (OISD) (As quoted in Woodcraft, S., et. al., 'Design for Social Sustainability: A framework for creating thriving new communities', *Social Life*, 2012. Page 16. Available at http://www.futurecommunities.net/files/images/Design_for_Social_Sustainability_0.pdf [Accessed on 20/09/2014].

¹¹Ibid.

¹² Section 3 (1) of *Environmental Management and Co-ordination Act, 1999* (EMCA) provides that every person in Kenya is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment; See also Article 42 of the Constitution of Kenya 2010.

¹³(2006) 2 EA 349

Environmental rights are also based on the link between environmental protection and development. One of the crucial components of environmental justice is that it seeks to tackle social injustices and environmental problems through an integrated framework of policies. Environmental justice also examines issues of procedural equity and access to the processes of justice. Ideally, the necessary policy, legal and institutional framework in place is crucial in ensuring environmental justice at the global, regional and national levels. However, even with these it may not be possible to achieve environmental justice if the people are not meaningfully empowered to utilize these frameworks in achieving the same. People should be able to participate meaningfully and to take advantage of the existing policy, legal and institutional framework. This is not possible where people do not fully appreciate the implications of environmental sustainability on their lives. Environmental education is thus important in empowering people to participate in finding viable solutions for environmental protection and conservation.

4. Need for Education in Environmental Sustainability

Environmental justice, which is vital in environmental governance, cannot be achieved without ensuring that the populace is well informed and this can only be effectively achieved through enhancing the right to education for all. Environmental justice ensures equitable treatment of people in ensuring access to and sharing of environmental resources and justice in environmental matters.¹⁴ This may not be possible in a society where people have not been individually empowered to facilitate meaningful participation. The argument however, is not that a citizenry with education, either formal, informal or non-formal will automatically become pro-environmental but instead it is argued that it is easier to engage a well-informed people in environmental matters that concern them as compared to an ignorant group. This paper contemplates two forms of education namely: “environmental education” and “environment-based education”. Environmental education has been defined as a process that allows individuals to explore environmental issues, engage in problem solving, and take action to improve the environment, thus enabling individuals develop a deeper understanding of environmental issues

¹⁴ United States Environmental Protection Agency, ‘Environmental Justice Analysis’, available at <http://www.epa.gov/sustainability/analytics/environmental-justice.htm> [Accessed on 20/09/2014].

and have the skills to make informed and responsible decisions.¹⁵ The *Environmental Management and Co-ordination Act, 1999*¹⁶ defines environmental education to include the process of recognising values and clarifying concepts in order to develop skills and attitudes necessary to understand and appreciate the inter-relatedness among man, his culture and his biophysical surroundings.¹⁷

The identifiable components of environmental education are: Awareness and sensitivity to the environment and environmental challenges; Knowledge and understanding of the environment and environmental challenges; Attitudes of concern for the environment and motivation to improve or maintain environmental quality; Skills to identify and help resolve environmental challenges; and participation in activities that lead to the resolution of environmental challenges.¹⁸

On the other hand, environment-based education focuses on educational results: using the environment to engage students in their education through “real-world” learning experiences, with the goals of helping them achieve higher levels of academic success as well as an understanding of and appreciation for the environment.¹⁹ By applying environmental education to real-life problems, children are also given authentic opportunities to provide service for their communities and solve local problems.²⁰

The foregoing definitions of environmental education show the close relationship that exists between environment and the human society. As such, any attempts aimed at achieving social sustainability must also incorporate environmental sustainability through conscious efforts from the communities towards environmental conservation. This change of attitude and appreciation of the importance of environment should be promoted through environmental education for all persons in a given society.

¹⁵ United States Environmental Protection Agency, ‘What is Environmental Education?’ available at <http://www2.epa.gov/education/what-environmental-education> [Accessed on 20/09/2014].

¹⁶ No. 8 of 1999, Laws of Kenya.

¹⁷ *Ibid*, sec. 2.

¹⁸ United States Environmental Protection Agency, *op.cit*; See also the touchstone definition of “environmental education” which was developed in a 1978 UNESCO conference and published in the “Tbilisi Declaration.”

¹⁹ California Department of Education, ‘The Case For Environmental Education: Education and the Environment/ Strategic Initiatives for Enhancing Education in California’, 2002, p. 5.

²⁰ *Ibid*, page 6.

Education empowers individuals for full development of human personality, and participation in society through acquisition of knowledge, human values and skills. The right to education has close linkage with the right to development, and is a powerful tool in poverty reduction strategies.²¹

The need for promoting the right to education arises from the fact that the younger generation will need to acquire this basic education while having environmental education inculcated therein. The older generation will also need to have access to education, which education takes various forms especially when it comes to environmental education, including traditional knowledge. It is therefore important that the state promotes the right to education as a platform for ensuring that environmental education is achieved for all. It is necessary to analyse the frameworks in place for promoting the right to education in Kenya and examine the extent to which environmental education has been integrated therein.

5. Right to Education

The right to education entails some basic elements without which it cannot be fully enjoyed. These include: availability of education - ensuring free and compulsory education for all children; accessibility of education - education accessible to anyone irrespective of race, gender, nationality, ethnic or social origin (elimination of discrimination); and acceptability of education - the quality of education should be guaranteed; adaptability of education - education that responds and adapts to the best interests of each child.²²

Governments' obligations on the right to education are thus defined along these elements.²³ With regard to availability, they are to ensure compulsory and free education for all children in the country. To guarantee accessibility, they are to eliminate exclusion from education based on any grounds of discrimination (race, colour, sex, language, religion, opinion,

²¹UNESCO (2008), 'The Right to Education', p.2.

²² Human Rights Education Associates, 'Right to Education', available at http://www.hrea.org/index.php?doc_id=402#top [Accessed on 14/2014].

²³Tomasevski, K., 'Manual on rights-based education: global human rights requirements made simple'. Bangkok: UNESCO Bangkok, 2004. *Collaborative project between the UN Special Rapporteur on the right to education and UNESCO Asia and Pacific Regional Bureau for Education*. Page 8. Available at http://www.hrea.org/erc/Library/display_doc.php?url=http%3A%2F%2Fwww.hrea.org%2Ferc%2FLibrary%2Fmanual_rightsbased.pdf&external=N [Accessed on 14/2014].

origin, economic status, birth, social status, minority or indigenous status, disability).²⁴ The education must also be acceptable in that governments must define the minimum standards for education, including the medium of instruction, contents and methods of teaching, and to ensure their observance in all educational institutions. In relation to adaptability, governments must design and implement education for children precluded from formal schooling.²⁵ This would include children belonging to nomadic pastoralists and others who may not be able to access formal institutions of learning for one reason or the other. Education is key in eradication of poverty in communities. This is especially so in the dire case of the pastoralist communities who entirely rely on environment for their livelihood. With education, it is possible to have these communities empowered to participate meaningfully in the development of their locality and this extends to enabling them actively participate in reversing or mitigating the adverse effects on the environment in these areas.²⁶

If empowered through education, people are able to make their own decisions especially in matters relating to exploitation of natural resources, Environmental Impact Assessment (EIA) and other matters that touch on development but have a bearing on the environment and the livelihoods of the people. The local communities would be able to actively engage potential investors in ensuring environmental sustainability. Principles of public participation in governance and environmental democracy as envisaged in the current Constitution of Kenya becomes easier to implement. There is a great need to ensure that appreciation and concern for the environment are instilled during the early years of development. Indeed, Article 29(1) (e) of the *Convention on the Rights of the Child* (1989) states that State Parties agree that the education of the child shall be directed to *inter alia* the development of respect for the natural environment. There is no better way of achieving this than ensuring that the right to education and environmental education are fully promoted in the country.

²⁴ Ibid, p. iv.

²⁵ Ibid, p. v.

²⁶ See Abdi, A.Y., Education, 'Conflict and Development: The Case of Northern Kenya', *Chapter 5: Analysis -The Role of Education in enhancing Development in Northern Kenya*, A dissertation submitted in partial fulfilment of the requirement for the degree of Masters of Arts (MA) in Education and International Development. Institute of Education, University of London, December 4, 2012.

Available at <http://www.bsix.ac.uk/staff/research/ECD%20%20DissertationvFinalFinal.pdf> [Accessed on 19/10/2014].

5.1 Forms of Education

Education can largely be categorised into formal, informal and non-formal systems of education. Formal education is defined as the hierarchically structured, chronologically graded ‘education system’, running from primary school through to the university and including, in addition to general academic studies, a variety of specialised programmes and institutions for full-time technical and professional training.²⁷ Informal education is defined as the truly lifelong process whereby every individual acquires attitudes, values, skills and knowledge from daily experience and the educative influences and resources in his or her environment – from family and neighbours, from work and play, from the market place, the library and the mass media.²⁸ Non-formal education has been described as any organised educational activity outside the established formal system – whether operating separately or as an important feature of some broader activity – that is intended to serve identifiable learning clienteles and learning objectives.²⁹

5.1.1 Traditional Knowledge

Public participation in environmental governance is recognised as a vital element that would ensure decisions made in the environmental sphere are arrived at after broad based consultation and are acceptable to the people they are likely to affect.³⁰ Indigenous people and

²⁷Smith, M. K. (2002) 'Informal, non-formal and formal education: a brief overview of different approaches', *the encyclopedia of informal education*, http://www.infed.org/foundations/informal_nonformal.htm. [Accessed on 19/10/2014].

²⁸A. Bame N samenang and Therese M.S. Tchombe (eds), ‘*Handbook of African Educational Theories and Practices: A Generative Teacher Education Curriculum*’, HDRC, 2011, p. 23. Available at books.google.com/books?isbn=9956444642 [Accessed on 19/10/2014]; See also generally Kenyatta, J., ‘Facing Mount Kenya: the tribal life of the Gikuyu’, Vintage Books, 1965.

²⁹ Smith, M. K. (2001). ‘What is non-formal education?’ *the encyclopaedia of informal education*. [<http://infed.org/mobi/what-is-non-formal-education/>]. [Accessed on 19/09/2014].

³⁰The *Stockholm Declaration on the Human Environment Stockholm, June 1972* (Principle 19) and the *Rio Declaration on Environment and Development Rio De Janeiro June 1992* (principle 10) both recognise the need to involve the populace in environmental decision-making. Principle 19 of the Stockholm Declaration advocates for education in environmental matters for the younger generation as well as the adults giving due consideration to the underprivileged in order to broaden the basis for an *enlightened opinion* and responsible conduct by individuals enterprises and communities in protecting and improving the environment in its full human dimension. (emphasis added) Principle 10 of the Rio Declaration further affirms the importance of environmental democracy. It provides that environmental issues are best handled with participation of all concerned citizens are relevant level. At the national level each individual shall have access to appropriate information concerning the environment that is held by Public authorities including information on hazardous materials and activities in their communities and the

their communities and other local communities also have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.³¹

The Constitution of Kenya also provides that it recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. As such, it requires the State to, *inter alia*, promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage; recognise the role of science and indigenous technologies in the development of the nation; and promote the intellectual property rights of the people of Kenya.³² This implies that the Constitution not only contemplates the formal system of education but also recognises the non-formal and traditional forms of education.³³

It has rightly been observed that from local and environmental points of view, traditional knowledge and its technology plays a primary role in poverty alleviation. Traditional knowledge is seen as one capable of yielding better results, technologically speaking, when placed within its environmental and social context. This is because sometimes, it has the most refined technologies, other times, it is very simple but still more appropriate, ecologically compatible and locally manageable.³⁴ Furthermore, local people are the custodians of traditional systems and are therefore well informed about their own situations, their resources, what works and what does not work. They are also aware of the possible impact of a change in one factor on the other parts of the production system.³⁵ Indeed, traditional knowledge arguably satisfies the definition of environmental education, going by the identifiable components of environmental education as

opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings including redress and remedy shall be provided.

³¹ *Rio Declaration*, principle 22.

³² *Ibid*, Article 11.

³³ See also Article 44 thereof which guarantees every person's right to use the language and to participate in the cultural life, of the person's choice.

³⁴ United Nations Convention to Combat Desertification (UNCCD) (2005), 'Revitalizing Traditional Knowledge: A Compilation of Documents and Reports from 1997 – 2003'. UNCCD, Bonn, Germany. 150 pp. at p. 11.

³⁵ *Ibid*.

discussed elsewhere in this paper.³⁶ It is also important to note that traditional knowledge and the important role it plays in environmental matters has been recognised under international legal instruments.³⁷

Traditional knowledge on environment should therefore be treated as equally important as the formalised forms of environmental education in their role of achieving environmental sustainability. There should be a complementarity of traditional and modern knowledge when it comes to environmental and social sustainability.

6. International and Regional Legal and Institutional Framework on Right to Education

At the international level, education is treated as a fundamental human right and essential for the exercise of all other human rights. It is said to be a right that promotes individual freedom and empowerment and yields important development benefits.³⁸ As such, normative instruments of the United Nations and UNESCO lay down international legal obligations for the right to education. These instruments promote and develop the right of every person to enjoy access to education of good quality, without discrimination or exclusion.³⁹

The framework calls on governments to fulfil their obligations both legal and political in regard to providing education of good quality for all, and to implement and monitor more effectively education strategies since education is conceived as a powerful tool by which economically and socially marginalized adults and children can lift themselves out of poverty and participate fully as citizens.⁴⁰

The right to education is internationally recognised and everyone has the right to education.⁴¹ The international law provides for equality of opportunity, access to free primary

³⁶United States Environmental Protection Agency, 'What is Environmental Education?' op. cit.

³⁷United Nations Convention to Combat Desertification, (article 18.2); The Convention on Biological Diversity, UNCED, 1992, (Articles 8(j), 17.2, 18.4).

³⁸ UNESCO, 'The Right to Education', visit <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/> [Accessed on 14/09/2014].

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹The *United Nations' Universal Declaration of Human Rights* (UDHR), adopted in 1948, (Article 26); The *International Convention on the Elimination of All Forms of Racial Discrimination* (1965) (Article 5(e).

education and the rights of minority groups.⁴² Education is expected to be promoted especially within the context of freedom of thought, conscience and religion.⁴³

There also exist several regional legal instruments which promote the right to education for all.⁴⁴

The *United Nations Educational, Scientific and Cultural Organization* (UNESCO) is the only United Nations agency with a mandate to cover all aspects of education, and its main objective is to contribute to peace and security in the world by promoting collaboration among nations through education, science, culture, and communication. Its mandate is universal and works with governments around the world to promote education for all. Since its creation in 1945, UNESCO's mission has been to contribute to the building of peace, poverty eradication, lasting development and intercultural dialogue, with education as one of its principal activities to achieve this aim.⁴⁵

The *World Bank*⁴⁶ also plays a major role in promoting education. Apparently, the World Bank is one of the largest external education financiers for developing countries, managing a portfolio of \$8.9 billion, with operations in 70 countries as of August 2013.⁴⁷

The World Bank is thus an important stakeholder in the global debate on the right to education for all.

The international and regional efforts towards promoting education demonstrate the importance of the universal right to education for all. However, most if not all of them tend to put more emphasis on the other forms of education but leave out environmental education. Under

⁴²The *1960 UNESCO Convention against Discrimination in Education* (CADE), Article 4; See also the *1966 International Covenant on Economic, Social and Cultural Rights* (ICESCR), Articles 13 and 14.

⁴³The *1966 International Covenant on Civil and Political Rights*, Article 18.4; See also the *1989 Convention on the Rights of the Child*, Articles 28 and 29.

⁴⁴The *American Declaration of the Rights and Duties of Man* (1948), Article XII, Article XXXI; See also the *Protocol 1 to the European Convention on Human Rights and Fundamental Freedoms* 1952; The *African Charter on Human and Peoples' Rights* (1981), Article 17; See also the *Charter on the Rights and Welfare of the African Child* (1990).

⁴⁵UNESCO, 'Education for the 21st Century', available at <http://en.unesco.org/themes/education-21st-century> [Accessed on 14/09/2014].

⁴⁶The International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) make up the World Bank.

⁴⁷The World Bank, 'World Bank Education Financing and Knowledge Activities' (January 2014), available at <http://www.worldbank.org/en/topic/education/brief/world-bank-education-lending-and-non-lending-activities> [Accessed on 14/09/2014].

these instruments, environmental education can only be effectively pegged on their support for informal and non-formal education. To this extent, they can be used as platforms for the promotion of environmental education for sustainability. This can effectively be achieved through ensuring that environmental education is incorporated in the domestication of the internationally recommended measures for the achievement of the right to education.

7. National Legal and Institutional Framework on Right to Education in Kenya

Kenya's legal and institutional framework on education is to be found in various pieces of legislation which govern the diverse forms and levels of education in Kenya. It is also noteworthy that Article 2(5) and (6) of the Constitution of Kenya 2010 allows the international legal framework on education to apply in Kenya to the extent of their ratification by Kenya.⁴⁸ This therefore means that the international general rules and recommendations on the right to education apply to Kenya.

7.1 The Constitution of Kenya 2010

The Constitution of Kenya 2010 recognises the right to education for all and has elaborate provisions on the realisation of this right for various groups of persons in the country. It provides for *inter alia* every person's right to education.⁴⁹ With regard to children, the Constitution provides that every child has *inter alia* the right to free and compulsory basic education.⁵⁰ Further, it provides that a person with any disability is entitled *inter alia* to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person.⁵¹ The Constitution also requires that the State should take measures, including affirmative action programmes, to ensure that the youth *inter alia* access relevant education and training.⁵² The State is also required to put in place affirmative action programmes designed to ensure that minorities and marginalised groups *inter*

⁴⁸ Article 2(5), 'The general rules of international law shall form part of the law of Kenya'; (6) 'Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution'; See also *The Treaty Making And Ratification Act*, No. 45 Of 2012.

⁴⁹ Article 43(1), Constitution of Kenya 2010.

⁵⁰ *Ibid*, Article 53(1).

⁵¹ *Ibid*, Article 54(1).

⁵² *Ibid*, Article 55.

alia are provided with special opportunities in educational and economic fields.⁵³ The State is also to take measures to ensure the rights of older persons *inter alia* to pursue their personal development.⁵⁴

Apart from the express provisions on education, the Constitution also provides for every person's right to freedom of expression, which includes: freedom to seek, receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research.⁵⁵ This provision coupled with Article 35 thereof which guarantees every person's right to access information held by the State and information held by another person and required for the exercise or protection of any right or fundamental freedom, form a good basis for ensuring that every person is able to access environmental education for the enjoyment of the right to clean and healthy environment.⁵⁶ This right to clean and healthy environment has been held to encompass the right to life which in itself was interpreted by Courts in various jurisdictions as including the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.⁵⁷

These provisions lay the constitutional framework on the right to education and are important in promoting this right in Kenya. However, they must be given life through the various sectoral laws on education.

7.2 *Basic Education Act, 2013*

The *Basic Education Act, 2013*⁵⁸ was enacted to give effect to Article 53 of the Constitution and other enabling provisions; to promote and regulate free and compulsory basic education; to provide for accreditation, registration, governance and management of institutions

⁵³ Ibid, Article 56.

⁵⁴ Ibid, Article 57.

⁵⁵ Ibid, Article 33(1).

⁵⁶ Ibid, Article 42.

⁵⁷ See the Indian case of *Francis Coralie Mullin v. Union Territory of Delhi and others*, 1981 AIR 746 1981 SCR (2) 516; See also the Kenyan case of *Waweru v Republic* (2006) 2 EA 349

⁵⁸ No. 14 of 2013, laws of Kenya.

of basic education; to provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission, and the County Education Board and for connected purposes.⁵⁹ This Act is to apply to all institutions of basic education as defined under the Act.⁶⁰ The Act adopts a broad definition of basic education and institutions of basic education in an attempt to ensure that all groups of persons get to acquire basic education as contemplated by the Constitution.

The provision of basic education as provided for by the Act is to be guided by the values and principles of *inter alia*: the right of every child to free and compulsory basic education; equitable access for the youth to basic education and equal access to education or institutions; promotion of quality and relevance; protection of every child against discrimination within or by an education department or education or institution on any ground whatsoever; protection of the right of every child in a public school to equal standards of education including the medium of instructions used in schools for all children of the same educational level; encouraging independent and critical thinking; and cultivating skills, disciplines and capacities for reconstruction and development; promoting the protection of the right of the child to protection, participation, development and survival; promotion of innovativeness, inventiveness, creativity, technology transfer and an entrepreneurial culture; non-discrimination, encouragement and protection of the marginalised, persons with disabilities and those with special needs; and provision of appropriate human resource, funds, equipment, infrastructure and related resources that meet the needs of every child in basic education.⁶¹

The Act also establishes the National Education Board⁶² which is charged with advising the Cabinet Secretary, the department of education and related departments on policy matters in

⁵⁹Ibid, Preamble.

⁶⁰ Sec. 2 defines “basic education” to mean the educational programmes offered and imparted to a person in an institution of basic education and includes Adult basic education and education offered in pre-primary educational institutions and centres. “adult basic education” is defined to mean basic education offered as a full-time or part-time course to a person who is above the age of eighteen years and includes education by correspondence, the media of mass communication and the use of libraries, museums, exhibitions or other means of visual or auditory communication for educational purposes and “Adult learning” is to be construed accordingly. Further, “institution of basic education and training” under the Act means a public or private institution or facility used wholly or partly, regularly or periodically for conducting basic education and training and includes a school, a tuition facility, an educational centre, an academy, a research institution, a school correctional facility or a borstal institution.

⁶¹Ibid, Sec. 4.

⁶²Ibid, sec. 5(1).

respect to *inter alia* collaboration with the Quality Assurance and Standards Council, Teachers Service Commission and with other stakeholders to promote standards in basic education and training; working with all relevant authorities and agencies to ensure that all the barriers to the right to quality education are removed and that the National and County governments facilitate the realization of the right to education by all Kenyans; the initiation of guidelines for approval by the Cabinet Secretary on the establishment of basic education institutions; putting measures in place to ensure all children attend and remain in school to complete basic education requirements; and putting measures to ensure, where applicable, transition to the next level of education, especially for the vulnerable and marginalized children.⁶³ Perhaps more important in the context of this discussion is the provision in the Act that the Cabinet Secretary shall upon advice of the National Education Board advise the government on the promotion of environmental protection education for sustainable development.⁶⁴ This is a commendable provision upon which incorporation of environmental education in the Kenyan education system can be pegged. The Board ought to take up the challenge and actively engage the Cabinet Secretary and other stakeholders in ensuring that environmental education becomes part of the curriculum in the Kenyan education system. The national Board can work with the County Education Board for every county,⁶⁵ who are to be agents of the National Education Board in these counties.⁶⁶

With regard to free and compulsory basic education, the Act states that the Cabinet Secretary shall implement the right of every child to free and compulsory basic education.⁶⁷ In order to facilitate this, the Act states that the Cabinet Secretary shall in consultation with the National Education Board and the relevant County Education Board provide for the

⁶³Ibid, sec. 5(2).

⁶⁴Ibid, sec. 42(4).

⁶⁵Ibid, Sec. 17(1).

⁶⁶Ibid, sec. 17(2).

⁶⁷Ibid, sec. 28(1). As part of the measures to promote this right to education for all, the Act also provides that no public school shall charge or cause any parent or, guardian to pay tuition fees for or on behalf of any pupil in the school. (sec. 29(1))

The Act provides that every Kenyan parent must compulsorily ensure that their child attends regularly as a pupil at an authorized school or such other approved institution for purposes of physical, mental, intellectual or social development of the child. (sec. 30).

establishment of: pre-primary, primary and secondary schools, mobile schools, and adult and continuing education centres, within a reasonably accessible distance within a county; appropriate boarding primary schools in arid and semi-arid areas, hard-to-reach and vulnerable groups as appropriate; and academic centres, or relevant educational institutions to cater for gifted and talented learners; special and integrated schools for learners with disability.⁶⁸

The Act requires the Cabinet Secretary to *inter alia*: provide free and compulsory basic education to every child; ensure compulsory admission and attendance of children of compulsory school age at school or an institution offering basic education; ensure that children belonging to marginalized, vulnerable or disadvantaged groups are not discriminated against and prevented from pursuing and completing basic education; provide human resource including adequate teaching and non-teaching staff according to the prescribed staffing norms; provide infrastructure including schools, learning and teaching equipment and appropriate financial resources; ensure quality basic education conforming to the set standards and norms; provide special education and training facilities for talented and gifted pupils and pupils with disabilities; ensure compulsory admission, attendance and completion of basic education by every pupil; monitor functioning of schools; and advise the national government on financing of infrastructure development for basic education.⁶⁹

This creates a special place and opportunity for environmental education as well as environmental-based education. Children from nomadic communities do not have permanent residency status and may therefore not have access to education in general. These can greatly benefit from the two forms of education. These forms of education can play crucial roles in the empowerment of these groups and consequently ensuring that they fully participate in the development agenda of their counties and the country at large.

The Act also establishes an Education Standards and Quality Assurance Council which shall *inter alia*: ensure standards and maintain quality in institutions of basic education; administer policies and guidelines set for basic education; supervise and oversee curriculum implementation and delivery; in cooperation with county education, monitor the conduct of assessments and examinations in institutions of basic education; and monitor and evaluate

⁶⁸Ibid, sec. 28(2).

⁶⁹Ibid, sec. 39.

standards and quality in basic education.⁷⁰ This Council ought to consider inclusion of environmental education in the curriculum as part of ensuring that guiding values and principles of *inter alia* promotion of quality and relevance; encouraging independent and critical thinking; and cultivating skills, disciplines and capacities for reconstruction and development; promoting the protection of the right of the child to protection, participation, development and survival; promotion of innovativeness, inventiveness, creativity, technology transfer and an entrepreneurial culture; and non-discrimination, encouragement and protection of the marginalised, persons with disabilities and those with special needs are fully promoted in the education sector.

The Act requires that the Cabinet Secretary, Teachers Service Commission, Standards and Quality Assurance Council, National Education Board, national quality assurance bodies, and the County Education Boards shall ensure the maintenance of standards, quality and relevance of education and training as provided for under the Act or any other written law.⁷¹ The Cabinet Secretary must, in consultation with the relevant departments or agencies and stakeholders through regulations and appropriate measures continuously review, evaluate and monitor policies on standards and relevance in education and training to assure and ensure standards, quality and relevance.⁷²

The foregoing bodies and offices can play a critical role in ensuring that environmental education is promoted for environmental and social sustainability for poverty eradication.

7.3 The Universities Act, 2012

The *Universities Act, 2012*⁷³ provides for the development of university education; the establishment, accreditation and governance of universities; the establishment of the Commission for University Education, the Universities Funding Board and the Kenya University and Colleges Central Placement Service Board; the repeal of certain laws, and for connected purposes.⁷⁴

⁷⁰Ibid, sec. 64.

⁷¹Ibid, Sec. 67.

⁷²Ibid, sec. 69.

⁷³ No. 42 of 2012, Laws of Kenya. Government Printer, Nairobi.

⁷⁴Ibid, Preamble.

The Act provides for the objectives of university education which include—advancement of knowledge through teaching, scholarly research and scientific investigation; promotion of learning in the student body and society generally; promotion of cultural and social life of society; support and contribution to the realization of national economic and social development; promotion of the highest standards in, and quality of, teaching and research; education, training and retraining higher level professional, technical and management personnel; dissemination of the outcomes of the research conducted by the university to the general community; facilitation of life-long learning through provision of adult and continuing education; fostering of a capacity for independent critical thinking among its students; and promotion of gender balance and equality of opportunity among students and employees; and promotion of equalization for persons with disabilities, minorities and other marginalized groups.⁷⁵

The Act further states that in the discharge of its functions and the exercise of its powers under the Act, a university shall be guided by the national values and principles of governance set out under Article 10 of the Constitution, and must in that regard—promote quality and relevance of its programmes; enhance equity and accessibility of its services; promote inclusive, efficient, effective and transparent governance systems and practices and maintenance of public trust; ensure sustainability and adoption of best practices in management and institutionalization of systems of checks and balances; promote private-public partnership in university education and development; and institutionalize non-discriminatory practices.⁷⁶

In order to promote the objectives of university education, amongst other functions⁷⁷, the Act establishes the Commission for University Education.⁷⁸ This Commission deals with matters relating to university education in Kenya.

Universities can be great places for promotion of quality and relevance in education; encouraging independent and critical thinking; and cultivating skills, disciplines and capacities for reconstruction and development; promoting the protection of the right of the child to protection, participation, development and survival; promotion of innovativeness, inventiveness, creativity, technology transfer and an entrepreneurial culture; and non-discrimination,

⁷⁵Ibid, sec. 3(1).

⁷⁶Ibid, sec. 3(2).

⁷⁷Ibid, sec. 5.

⁷⁸Ibid, sec. 4.

encouragement and protection of the marginalised, persons with disabilities and ensuring those with special needs are fully promoted in the education sector. Environmental education can be incorporated in this process and ensure that these institutions of higher learning produce graduates who can take a leading role in the realisation of the right to education for environmental and social sustainability in Kenya.

7.4. *The Teachers Service Commission Act*

The establishment of TSC has been provided for under the Constitution of Kenya as a Constitutional Commission and is mandated to perform *inter alia* the following teacher management functions: to register trained teachers; to recruit and employ registered teachers; to assign teachers employed by the Commission for service in any public school or institution; to promote and transfer teachers; to exercise disciplinary control over teachers; and to terminate the employment of teachers. Further, the Commission shall- review the standards of education and training of persons entering the teaching service; review the demand for and the supply of teachers; and advise the national government on matters relating to the teaching profession.⁷⁹

The *Teachers Service Commission Act, 2012*⁸⁰ was enacted to make further provision for the Teachers Service Commission established under Article 237 of the Constitution, its composition; functions and powers; the qualifications and procedure for appointment of members; and for connected purposes.⁸¹ In the performance of its functions and the exercise of its powers, the Commission is to—be guided by the national values and principles of governance under Article 10⁸² and the values and principles of public service under Article 232 of the Constitution, taking into account the best interests of the child under Article 53 of the Constitution; and subject to Article 249(2) of the Constitution, consult with State and on-State actors in the education sector.⁸³ In addition to the functions set out in Article 237 of the Constitution, the Commission is to—formulate policies to achieve its mandate; provide strategic direction, leadership and oversight to the secretariat; ensure that teachers comply with the

⁷⁹Article 237.

⁸⁰ Act No. 12 of 2003, (Act No. 20 of 2012, Laws of Kenya).

⁸¹Ibid, preamble.

⁸² Article 10 of the Constitution of Kenya

⁸³Ibid, sec. 4.

teaching standards prescribed by the Commission under this Act; manage the payroll of teachers in its employment; facilitate career progression and professional development for teachers in the teaching service including the appointment of head teachers and principals; monitor the conduct and performance of teachers in the teaching service; and do all such other things as may be necessary for the effective discharge of its functions and the exercise of its powers.

This Act does not have much in the way of promoting environmental education in Kenya. However, since the teachers are some of the stakeholders that the Cabinet Secretary and the National Education Boards may use in the promotion of environmental protection education for sustainable development, it is important to ensure that teachers actively and meaningfully participate in this noble role.

7.5 *The Higher Education Loans Board Act, 1995*

*The Higher Education Loans Board Act, 1995*⁸⁴ was enacted to provide for the establishment of a Board for the management of a Fund to be used for granting loans to assist Kenyan students to obtain higher education at recognized institutions within and outside Kenya and for matters incidental thereto and connected therewith.⁸⁵

The Act establishes State Corporation, the Higher Education Loans Management Board, whose functions include *inter alia*: formulating sound policies for regulating the management of the Fund; soliciting for funds and other assistance to promote the functions of the Board; setting the criteria and conditions governing the granting of loans including the rate of interest and recovery of loans.⁸⁶

The Higher Education Loans Board can sponsor more students from the arid and semi arid areas especially those interested in taking up environmental based courses for purposes of ensuring that they actively participate in promoting environmental education for sustainable development. The challenge it faces is that they are short of the finances and they could do better with more funding from the Government in order to promote higher education in the country especially for the needy.

⁸⁴ Act No. 6 of 2005, Chapter 213A, Laws of Kenya. Revised Edition 2012 [1995]

⁸⁵ Ibid, Preamble.

⁸⁶ Ibid, SS. 3 and 6.

7.6 *The Technical and Vocational Education and Training Act, 2013*

The Technical and Vocational Education and Training Act, 2013⁸⁷ was enacted to provide for the establishment of a technical and vocational education and training system; to provide for the governance and management of institutions offering technical and vocational education and training; to provide for coordinated assessment, examination and certification; to institute a mechanism for promoting access and equity in training; to assure standards, quality and relevance; and for connected purposes.⁸⁸

The Act provides that in the discharge of its functions and exercise of their statutory powers, the implementing authorities shall be guided by following principles: training shall be availed to all qualified Kenyans without discrimination; there shall be instituted appropriate mechanisms to promote access, equity, quality and relevance in training to ensure adequate human capital for economic, social and political development; training programmes shall take into account—the educational, cultural and social economic background of the people; the technical and professional skills, knowledge and levels of qualification needed in the various sectors of the economy and the technological and structural changes to be expected; the trends towards integration of information and communication technologies to multiply access and improve training capacity, delivery modes and life-long employability of graduates; the employment opportunities, occupational standards and development prospects at the international, national, regional and local levels; and the protection of the environment and the common heritage of the country.⁸⁹

The Act requires that the Cabinet Secretary, in consultation with the other Ministries and the private sector involved in training, develop policies and provide strategies for development of a national training system, and they also have the overall responsibility in the provision of training and shall, in collaboration with other Ministries and stakeholders, be responsible for promoting access, equity, quality and relevance in training.⁹⁰

⁸⁷ No. 29 of 2013, Laws of Kenya.

⁸⁸ *Ibid*, preamble.

⁸⁹ *Ibid*, sec. 3(1).

⁹⁰ *Ibid*, sec. 4.

The Act also establishes⁹¹ the Technical and Vocational Education and Training Authority whose functions include to, *inter alia*: regulate and co-ordinate training; accredit and inspect programmes and courses; advise and make recommendations to the Cabinet Secretary on all matters related to training; determine the national technical and vocational training objectives; promote access and relevance of training programmes within the framework of the overall national socio-economic development plans and policies; prescribe the minimum criteria for admission to training institutions and programmes in order to promote access, equity and gender parity; establish a training system which meets the needs of both the formal and informal sectors as provided under this Act; inspect, license, register and accredit training institutions; assure quality and relevance in programmes of training; liaise with the national and county governments and with the public and the private sector on matters relating to training; undertake, or cause to be undertaken, regular monitoring, evaluation and inspection of training and institutions to ensure compliance with set standards and guidelines; mobilize resources for development of training; ensure the maintenance of standards, quality and relevance in all aspects of training, including training by or through open, distance and electronic learning; and approve the process of introduction of new training programmes and review existing programmes in Technical and Vocational Education and Training Board institutions.⁹²

It is noteworthy that this Act can effectively promote achievement of environmental education especially considering its implementation is to be guided by *inter alia* institution of appropriate mechanisms to promote access, equity, quality and relevance in training to ensure adequate human capital for economic, social and political development; and the training programmes shall take into account—the educational, cultural and social economic background of the people; the technical and professional skills, knowledge and levels of qualification needed in the various sectors of the economy and the technological and structural changes to be expected; and the protection of the environment and the common heritage of the country. This is a viable platform for the promotion and realisation of environmental education and environmental-based education for all for sustainability.

⁹¹Ibid, sec. 6.

⁹²Ibid, sec. 7.

8. Right to Education for Environmental and Social Sustainability

Education has been internationally recognised as essential for the enjoyment of many other rights as well as empowering persons to participate in the development agenda of their country as well as realising self-determination. Environmental justice is inextricably related to sustainable development and social justice.⁹³ It has been argued that it is possible to have a situation of perfect equality but which is destructive of the environment, and also a situation of perfect environmental sustainability which is inequitable.⁹⁴ Environmental justice is thus seen as an alternative discourse to sustainable development. This is because environmental justice emphasizes commitment to the struggle of communities who suffer the most environmental damage by giving them a voice to access decision-making, which links with social justice to ensure sustainable and equitable development. Environmental justice is a concept that promotes the equitable treatment of people of all races, incomes and cultures with respect to environmental laws, regulations, policies and decisions.⁹⁵

It has been argued that an essential requirement for any individual to participate in society is to have a voice, and consequently, social justice demands for the voice of the child to be acknowledged and the education system is the means to show children how to acquire the capacity to participate.⁹⁶ As already argued elsewhere, environmental justice ensures the equitable treatment of people in ensuring access to and sharing of environmental resources and justice in environmental matters.⁹⁷ This may not be possible in a society where people have not been individually empowered to facilitate meaningful participation. Environmental education gives people this voice and enables them appreciate the available information on environment.⁹⁸

⁹³ Bullard, R.D., et. al. (eds), 'Just Sustainabilities: Development in an Unequal World', p. 325, *Taylor & Francis*, Apr 27, 2012.

⁹⁴ Helen Todd & ChistosZografos, Justice for the Environment: Developing a Set of Indicators of Environmental Justice for Scotland, *Environmental Values*, Vol.14, No.4 (November 2005), pp. 483-501

⁹⁵ US Environmental Protection Agency, 'Smart Growth and Equitable Development', available at <http://www.epa.gov/smartgrowth/equitableddev.htm> [Accessed on 20/10/2014].

⁹⁶ Mona Niemeyer – 'The Right to Inclusive Education in Germany' *The Irish Community Development Law Journal* Vol.3 (1) [2014], p. 52.

⁹⁷ United States Environmental Protection Agency, 'Environmental Justice Analysis', available at <http://www.epa.gov/sustainability/analytics/environmental-justice.htm> [Accessed on 20/09/2014].

⁹⁸ See generally UNESCO, 'Educating for a Sustainable Future: A Transdisciplinary Vision for Concerted Action', EPD-97/CONF.401/CLD.1.November 1997.

For instance, where EIAs are done shoddily in development projects, affected communities are able to question the concerned persons since they are the main stakeholders and can ably negotiate or at least engage meaningfully in such matters.

Environmental justice can therefore address concerns as to the use of environmental resources and how to ensure equitable participation in environmental decision-making. Access to environmental information for all those who choose to participate in such decision-making is integral to the concept of environmental democracy.⁹⁹ All these can be made possible through promoting the right to education for all in the various forms that it is recommended in the international frameworks on education.

9. Challenges

Although the right to education is universally recognised, with Kenya showing efforts of ensuring that everyone entitled to acquiring education does that, there are still a number of challenges that threaten this noble exercise by the Government and the relevant stakeholders. Notably, in 2003, the Government of Kenya introduced free primary education for all in Kenya.¹⁰⁰ This saw the number of children enrolling in the public primary schools soar to unprecedented numbers.¹⁰¹ Over the years, a number of challenges have emerged and remain unaddressed to date.

9.1 Poor Quality basic Education

The Kenyan system of education mainly emphasises on formal education with little regard to the informal and non-formal forms of education despite their recognition under the law.

It has been asserted that non-formal education is about ‘acknowledging the importance of education, learning and training which takes place outside recognized educational institutions’ and it is associated with four characteristics namely: Relevance to the needs of disadvantaged groups; Concern with specific categories of person; A focus on clearly defined purposes; and Flexibility in organization and methods.¹⁰² It has been argued that formal educational systems

Available at http://www.unesco.org/education/tlsf/mods/theme_a/popups/mod01t05s01.html [Accessed on 20/10/2014].

⁹⁹Hazen, S., 1998 <<http://www.ourplanet.com>> accessed on 29/09/2014; See also generally Muigua, K. and Musyimi, P., ‘Enhancing Environmental Democracy in Kenya’.

Available at http://www.kmco.co.ke/attachments/article/81/072_Envntal_Dem_Kenya.pdf

¹⁰⁰ Bold, T., et. al. (2010), ‘Free Primary Education in Kenya: Enrolment, Achievement and Accountability’, p. 2._

¹⁰¹ Ibid.

¹⁰² Smith, M. K. (2001). ‘What is non-formal education?’ op. cit.

have adapted too slowly to the socio-economic changes around them and that they are held back not only by their own conservatism, but also by the inertia of societies themselves, with educational policy making tending to follow rather than lead other social trends. It was from this point of departure that planners and economists in the World Bank began to make a distinction between informal, non-formal and formal education.¹⁰³

In Kenya, there is a range of initiatives and programmes that have adopted the title ‘non-formal’ and include *inter alia* literacy and basic education for adults and young people, programmes for school drop outs and various kinds of educational work linked with development initiatives. However, much emphasis seems to be going to the formal system of education at the expense of the other forms of education.

With the advent of free primary education the influx of children especially in public schools has negatively affected the quality of education. This is because other factors have either remained relatively unchanged or have been overstretched.¹⁰⁴ For instance, the number of teachers in these schools remains low and in some areas, there have been resort to untrained teachers to meet the ever rising number of children in schools. The few trained teachers are overwhelmed and the negative impact is that some of these pupils can barely communicate coherently in either basic Swahili or English leave alone learning any developmental skills.

9.2 Inadequate Infrastructure and Under-staffing

The poor quality basic education is mostly as a direct result of the inadequate infrastructure and under-staffing in the public schools. There are barely enough professionally trained teachers in these institutions and this affects the global efforts towards the realisation of the right to education for all in the country.¹⁰⁵

In some areas, pupils still sit under trees or sit in overcrowded classrooms due to poor infrastructure or total lack of infrastructure.¹⁰⁶ Consequently, even if they go to school, a large number of children experience a quality of education that is extremely poor, leaving them

¹⁰³ Ibid.

¹⁰⁴ Bold, T., et. al. (2010), op.cit. p.3.

¹⁰⁵ Cheruto, K. L., et. al., ‘Management challenges facing implementation of free primary education in Kenya: A case of Keiyo District’, *Journal of Education Administration and Policy Studies* Vol. 2(5), pp. 71-76 at p. 75, June 2010. Available online at <http://www.academicjournals.org/JEAPS> [Accessed on 20/10/2014].

¹⁰⁶ Ibid, p. 74.

without the skills and knowledge they need to lift themselves out of poverty and to appreciate environmental education.

9.3 Lack of Sufficient Funding

Despite the Government's rhetoric of free primary education, some areas hardly have the necessary infrastructure in place simply because of either insufficient or lack of funding. Even when the funds have been released, they always get to these places way out of time thus disrupting smooth learning since the head teachers often complain that they have run out of necessities like food and teaching materials and send children home.¹⁰⁷

9.4 High Poverty Levels

The rate of school enrolment in many areas is often low due to the persisting high poverty levels.¹⁰⁸ This often reflects in the national examinations as some of the children in poverty stricken areas especially the arid and semi arid areas barely get enough food to eat leave alone obtaining basic educational necessities. Much effort has been focused on enrolment, without adequate attention to attendance, completion and attainment, or to the measures through which those outcomes can be achieved.¹⁰⁹ Unfortunately, poverty acts as a major hindrance to the achievement of these goals.

If quality and inclusive education is to be achieved, then the poverty menace should effectively be dealt with.

9.5 Lack of Sufficient Information on Environmental matters

Environmental democracy involves the public's right to information, participation in environmental decisions and access to justice in environmental matters.¹¹⁰ The right to

¹⁰⁷ Ibid, p. 75.

¹⁰⁸ This may explain the increased enrolment of children in public schools upon announcement of free primary education.

¹⁰⁹ Ogola, F.O., 'Free Education in Kenya's Public Primary Schools: Addressing the Challenges', p. 22. 2010 Organisation for Social Science Research in Eastern and Southern Africa, Addis Ababa.

¹¹⁰ The *Convention on Access to Information Public Participation in decision-making and Access to Justice in Environmental Matters* (Aarhus Convention), 1998.

information is also envisaged in the current Constitution of Kenya¹¹¹ and this would arguably require an empowered people who are able to appreciate such information in enabling them make informed decisions. This would only be possible through empowering people by ensuring that they have access to education be it formal, informal or non-formal.

The amount of environmental information to be found in the public domain is minimal if at all. Indeed, even the existing national framework on education barely contains enough measures to ensure promotion of environmental education.

10. Way Forward

Although the right to education is major on the agenda of the international community, the challenges to the achievement of quality in education are even greater. The realization of the right to education is dependent upon its effective implementation. Obligations and political commitments under international instruments must be reflected in constitutions and national legislation and be further translated into policies and programmes.¹¹² It has rightly been observed that quality education during the early years play a vital part in promoting readiness for school and is also the best guarantee of promoting sustainable economic and social development, and attaining the Millennium Development Goals and the Education for All and A World Fit for Children goals.¹¹³ If quality education and the aims of education as provided for in the international and national frameworks on education are to be achieved, there is need to re-assess the relevance of the curriculum, the role of teachers, and the nature of the learning environment. It is necessary to ensure that the process of education is one that is empowering, participatory, transparent and accountable. The high Poverty levels must be tackled in line with Article 43 of the Constitution of Kenya on economic and social rights of all. This forms the basis of the achieving environmental rights for all.

Environmental rights can best be achieved through the advocacy of rights to information, to consultation in the decision-making process and to access to courts, revamped in an

¹¹¹Article 35. It is however noteworthy that the relevant legislation herein under is yet to be put in place.

¹¹²UNESCO (2008), 'The Right to Education', op.cit.p.3.

¹¹³United Nations Children's Fund/ UNESCO (2007), 'A Human Rights-Based Approach to Education', p. 31.

environmental setting. There is a close link between environmental degradation, lack of environmental justice and democracy, poverty and low levels of education among the citizenry, and provision of education is the crucial first step towards their elimination.¹¹⁴ As already observed, the international legal instruments on right to education provide that primary education should be free and compulsory. However, the law cannot force either parents or governments to ensure education for all if it is beyond their means; thus, international human rights law mandates a progressive, step-by-step approach to fulfilling the right to education. Indeed, in the recent Kenyan case of *Michael Mutinda Mutemi v Permanent Secretary, Ministry of Education & 2 others*¹¹⁵ the Court affirmed the governments' international obligation to ensure the realisation of right to education within the available resources. This is in line with both the *Convention on the Rights of the Child* 1989 (article 4) and *the International Covenant on Economic, Social and Cultural Rights* (articles 2 and 13) that require that States undertake all appropriate legislative, administrative and other measures to the maximum extent of their available resources for the implementation of education rights.

Despite this, the Government needs to develop strategic plans for the progressive realization of quality primary and secondary education. There should be appropriate legislative, administrative and other measures that will ensure that there is active integration of environmental education in the national education curricula for promotion of environmental education which is essential for environmental and social sustainability in the country.

11. Conclusion

Although the Government's efforts in the education sector are to be lauded, more can still be done especially in the area of promoting environmental education, which area it has performed poorly. There should be meaningful participation especially for marginalized groups and communities, to contribute their experience and expertise to the development of education policy and provision. For instance, there can be borrowing of the good aspects of traditional knowledge. This is especially important considering that the mainstream education does not make a person automatically environmentally friendly. However, with environmental education

¹¹⁴ UNESCO, 'Educating for a Sustainable Future: A Transdisciplinary Vision for Concerted Action', op.cit.

¹¹⁵[2013] eKLR, Petition No. 133 of 2013.

taking both formal and informal approaches, it is possible to have a generation that is more receptive to sustainable development efforts and who would indeed feel part of it seeing that they can easily identify with some of the approaches employed therein. This way, education will be all inclusive and one that supports and promotes environmental education for environmental and social sustainability.

Realising the right to education for environmental and social sustainability in Kenya is an imperative whose time has come.

References

1. A. Bame N samenang and Therese M.S. Tchombe (eds), *‘Handbook of African Educational Theories and Practices: A Generative Teacher Education Curriculum’*, HDRC, 2011, p. 23. Available at books.google.com/books?isbn=9956444642 [Accessed on 19/10/2014]
2. Abdi, A.Y., Education, ‘Conflict and Development: The Case of Northern Kenya’, *Chapter 5: Analysis -The Role of Education in enhancing Development in Northern Kenya*, A dissertation submitted in partial fulfillment of the requirement for the degree of Masters of Arts (MA) in Education and International Development. Institute of Education, University of London, December 4, 2012.

Available at <http://www.bsix.ac.uk/staff/research/ECD%20%20DissertationvFinalFinal.pdf> [Accessed on 19/10/2014].
3. Bold, T., et. al. (2010), ‘Free Primary Education in Kenya: Enrolment, Achievement and Accountability’.
4. Bullard, R.D., et. al. (eds), ‘Just Sustainabilities: Development in an Unequal World’, *Taylor & Francis*, Apr 27, 2012.
5. California Department of Education, ‘The Case For Environmental Education: Education and the Environment/ Strategic Initiatives for Enhancing Education in California’, 2002.
6. *Charter on the Rights and Welfare of the African Child* (1990).
7. Cheruto, K. L., et. al., ‘Management challenges facing implementation of free primary education in Kenya: A case of Keiyo District’, *Journal of Education Administration and Policy Studies* Vol. 2(5), pp. 71-76, June 2010. Available online at <http://www.academicjournals.org/JEAPS> [Accessed on 20/10/2014].
8. Colantonio, A. and Dixon, T. (2009) *Measuring Socially Sustainable Urban Regeneration in Europe*, Oxford Brookes University: Oxford Institute for Sustainable Development (OISD) (As quoted in Woodcraft, S., et. al., ‘Design for Social Sustainability: A framework for creating thriving new communities’, *Social Life*, 2012. Available at http://www.futurecommunities.net/files/images/Design_for_Social_Sustainability_0.pdf [Accessed on 20/09/2014].
9. Constitution of Kenya, 2010 (Government Printer, Nairobi).
10. *Convention on Access to Information Public Participation in decision-making and Access to Justice in Environmental Matters* (Aarhus Convention), 1998.
11. *Environmental Management and Co-ordination Act, 1999* (EMCA).
12. Harris, J.m., ‘Sustainability and Sustainable Development’, *International Society for Ecological Economics*.

13. *Internet Encyclopaedia of Ecological Economics*, February 2003. Available at <http://www.isecoeco.org/pdf/susdev.pdf> [Accessed on 20/09/2014].
14. Human Rights Education Associates, 'Right to Education', available at http://www.hrea.org/index.php?doc_id=402#top [Accessed on 14/2014].
15. Morelli, John (2011) "Environmental Sustainability: A Definition for Environmental Professionals," *Journal of Environmental Sustainability*: Vol. 1: Iss. 1, Article 2, pp. 1-9 Available at <http://scholarworks.rit.edu/cgi/viewcontent.cgi?article=1007&context=jes> [Accessed on 22/09/2014].
16. (2001). 'What is non-formal education?' *the encyclopaedia of informal education*. [<http://infed.org/mobi/wh+at-is-non-formal-education/>]. [Accessed on 19/09/2014].
17. Tomasevski, K., 'Manual on rights-based education: global human rights requirements made simple'. Bangkok: UNESCO Bangkok, 2004. *Collaborative project between the UN Special Rapporteur on the right to education and UNESCO Asia and Pacific Regional Bureau for Education*. Page 8. Available at http://www.hrea.org/erc/Library/display_doc.php?url=http%3A%2F%2Fwww.hrea.org%2Ferc%2FLibrary%2Fmanual_rightsbased.pdf&external=N [Accessed on 14/2014].
18. Kenyatta, J., 'Facing Mount Kenya: the tribal life of the Gikuyu', Vintage Books, 1965.
19. *The Stockholm Declaration on the Human Environment Stockholm, June 1972*
20. *the Rio Declaration on Environment and Development Rio De Janeiro June 1992*
21. United Nations Convention to Combat Desertification (UNCCD) (2005), 'Revitalizing Traditional Knowledge: A Compilation of Documents and Reports from 1997 – 2003'. UNCCD, Bonn, Germany. 150 pp.
22. United Nations Convention to Combat Desertification
23. Convention on Biological Diversity, UNCED, 1992.
24. *The United Nations' Universal Declaration of Human Rights (UDHR)*, adopted in 1948.
25. *The International Convention on the Elimination of All Forms of Racial Discrimination (1965)*.
26. *1960 UNESCO Convention against Discrimination in Education (CADE)*.
27. *1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)*.
28. *The 1966 International Covenant on Civil and Political Rights*
29. *1989 Convention on the Rights of the Child*

30. *The American Declaration of the Rights and Duties of Man* (1948).
31. *Protocol 1 to the European Convention on Human Rights and Fundamental Freedoms* 1952
32. *The African Charter on Human and Peoples' Rights* (1981).
33. The World Bank, 'World Bank Education Financing and Knowledge Activities' (January 2014).
Available at <http://www.worldbank.org/en/topic/education/brief/world-bank-education-lending-and-non-lending-activities> [Accessed on 14/09/2014].
34. *The Treaty Making And Ratification Act*, No. 45 Of 2012. Laws of Kenya. Government Printer, Nairobi.
35. Helen Todd & ChistosZografos, Justice for the Environment: Developing a Set of Indicators of Environmental Justice for Scotland, *Environmental Values*, Vol.14, No.4 (November 2005), pp. 483-501
36. Mona Niemeyer – 'The Right to Inclusive Education in Germany' *The Irish Community Development Law Journal* Vol.3 (1) [2014].
37. Hazen, S., 1998 <<http://www.ourplanet.com>> accessed on 29/09/2014
38. Muigua, K. and Musyimi, P., 'Enhancing Environmental Democracy in Kenya'. Available at http://www.kmco.co.ke/attachments/article/81/072_Envtal_Dem_Kenya.pdf
39. Ogola, F.O., 'Free Education in Kenya's Public Primary Schools: Addressing the Challenges', 2010 Organisation for Social Science Research in Eastern and Southern Africa, Addis Ababa.
40. Smith, M. K. (2002) 'Informal, non-formal and formal education: a brief overview of different approaches', *the encyclopedia of informal education*, http://www.infed.org/foundations/informal_nonformal.htm. [Accessed on 19/10/2014].
41. Tilbury, D., 'Environmental Education for Sustainability: Defining the New focus of Environmental Education in the 1990's', *Environmental Education Research*, Vol. 1, No. 2, 1995, 195-212.
42. United Nations Children's Fund/ UNESCO (2007), 'A Human Rights-Based Approach to Education'.
43. UNESCO, 'Educating for a Sustainable Future: A Tran disciplinary Vision for Concerted Action', EPD-97/CONF.401/CLD.1.November 1997.
Available at http://www.unesco.org/education/tlsf/mods/theme_a/popups/mod01t05s01.html [Accessed on 20/10/2014].
44.'The Right to Education'.

Available at <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/> [Accessed on 14/09/2014].

45.'Education for the 21st Century', available at <http://en.unesco.org/themes/education-21st-century> [Accessed on 14/09/2014].
46. United States Environmental Protection Agency, 'Environmental Justice Analysis', available at <http://www.epa.gov/sustainability/analytics/environmental-justice.htm> [Accessed on 20/09/2014].
47.,..... 'What is Environmental Education?'

available at <http://www2.epa.gov/education/what-environmental-education> [Accessed on 20/09/2014].
48. 'Smart Growth and Equitable Development', available at <http://www.epa.gov/smartgrowth/equitabledev.htm> [Accessed on 20/10/2014].
49. 'Environmental Justice Analysis', available at <http://www.epa.gov/sustainability/analytics/environmental-justice.htm> [Accessed on 20/09/2014].
50. World Conservation Strategy (IUCN/UNEP/WWF, 1980); the Brundtland Report (World Commission on Environment and Development, 1987)